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IN THE  
**SUPREME COURT OF THE UNITED STATES**

Term, 194—

 **ABRAM W. FOURNACE,**

*Petitioner,*

**VS.**

**CHESTER BOWLES, PRICE ADMINISTRATOR,**

*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI, AND  
BRIEF IN SUPPORT THEREOF.**

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT  
OF APPEALS

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To The Honorable, The Chief Justice and Associate  
Justices of The Supreme Court of the United States:

The Petitioner respectfully petitions for a writ of certiorari directed to the United States Emergency Court of Appeals to review the judgment of that Court rendered in the above entitled cause on March 15, 1945, and amended on March 23, 1945, on which a petition for a rehearing was denied on April 17, 1945; and in connection herewith respectfully shows this Honorable Court:

## SUMMARY STATEMENT OF THE MATTER INVOLVED

The Petitioner challenges the validity of Maximum Price Regulations Nos. 139, 294 and 372, adopted and promulgated under the Emergency Price Control Act of 1942.

Regulation No. 139, effective March 24, 1943, purported to fix the prices for used mechanical refrigerators; No. 294, effective January 7, 1943, to fix the prices of used vacuum cleaners; and No. 372, effective May 3, 1943, to fix the prices of used washing machines.

The Petitioner was engaged in a retail business of dealing in used furniture and household appliances, and was indicted in the Indianapolis Division of the Southern District of Indiana, on June 22, 1944, on the charge of the violation of the above Maximum Price Regulations by the sale of articles listed in the indictment at prices above the regulations. On June 26, 1944, he was convicted on all twelve counts under Title 50, U. S. C. A. Appendix, Section 925.

Under the procedure provided in Title 50, U. S. C. A. Appendix, Section 924 (e) (1), the Petitioner, within five days after judgment, applied to the United States District Court for the Southern District of Indiana for leave to file in the Emergency Court of Appeals a complaint against the Administrator. Leave was granted and a complaint filed with the Emergency Court of Appeals charging the invalidity of the above Regulations, on about September 20, 1944. On October 26, 1944, the Respondent filed an answer with a prayer that the complaint be dismissed. On about November 21, 1944, the Petitioner filed an application for leave to introduce evidence under Section 204

(e) of the Emergency Price Control Act. On December 6, 1944, the Respondent filed "Objections to Application for Leave to Introduce Evidence, Including Motions to Dismiss Complaint or to Strike Portions Thereof."

After hearing arguments on the pleadings the Emergency Court of Appeals decided the case with a written opinion, dismissing the complaint. The opinion was modified on March 23, 1945, by an order of the Court. On about March 26, 1945, the Petitioner filed a petition for rehearing, which, on April 17, 1945, was denied.

The above matters are set forth more fully in the brief bound herewith under the Statement of the Case.

## II

### REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

The United States Emergency Court of Appeals has in this case decided an important question of Federal law which has not been, but should be, settled by this Court. That question is whether or not regulations fixing the maximum prices for eight different types of refrigerators, under Regulation No. 139; for one type of used vacuum cleaner, under Regulation No. 294; and for three different types of washing machines, under Regulation No. 372, are valid Regulations under the Emergency Price Control Act.

The Regulations do not fix any difference or spread between the prices at which these commodities may be sold to a retail dealer and the prices at which the retail dealer may sell them to his retail customers. A spread of maximum prices fixed under Emergency Price Control Act is generally provided for with respect to other used commodities, as for instance used automobiles.

The prices fixed for the commodities in question were so low that users of the commodities would not place them upon the market at prices lower than the OPA prices. The dealers therefore, even if they had been able to obtain them at the OPA prices, would have realized no gross profit on the sales out of which the cost of doing business could be obtained, and would therefore have been unable to continue in business if they could have purchased at OPA prices and then had sold at the same OPA prices. But further, the prices fixed were so low that it was impossible to obtain these used commodities without paying more than the ceiling prices, even where original purchasers had no further use for them because of changes in their home conditions which would make it advisable and practical to dispose of such commodities.

The Regulations ignored the actual value of these commodities and fixed the ceiling prices in accordance with models and makes of appliances rather than in accordance with the condition, the repairing and reconditioning cost, their quality or their prospective useful life. The differences made between the commodities "as is" and the commodities "as reconditioned," were only arbitrary differences, since they consisted entirely of inflexible price differences that do not bear a direct relation to the costs of repairing and reconditioning and are not specifically based thereon.

The unreasonableness of the price regulations involved resulted in the practical destruction of any value in such commodities, which would be equivalent to confiscation, by reason of the fact that there was no effective way through which the cost of labor, repair materials and replacement parts was controlled and regulated. This re-



sulted in making it generally impossible to sell such commodities at or below ceiling prices without selling below the actual cost of obtaining them and putting them into usable condition. The Regulations ignored the facts:

(a) That labor, transportation and other costs in the operation of a small business in handling such used commodities more than doubled between the time the ceiling prices were established and the date on which the sales involved were made.

(b) That mass production could not be carried on in connection with the reconditioning of such commodities, but had to be done by hand generally by a person undertaking the entire repairing and reconditioning of each commodity separately.

(c) That the Regulations could not accomplish the purpose and intent of Congress as expressed in the Emergency Price Control Act.

The effect of the Regulations was to defeat the purposes set out in Section 1 of Title 50 U. S. C. A. Appx., 901, by creating hardships upon such persons engaged in the business of dealing at retail in such used commodities. The continued application of the same Regulations will completely destroy that business without accomplishing any purpose stated in the Act. There would be no abnormal increase in prices generally which would affect any of the purposes stated in the Act if the Regulations with respect to the commodities in question were held to be invalid because of being unreasonable. Reasonable regulations under which the business of dealing in such used commodities could survive would result in the general advantage to the public—just in the same way as the preservation of any mercantile activity results in the service

to the public which merchants render in the distribution of the goods demanded by the public.

The Emergency Court of Appeals refused to grant the application for leave to introduce evidence under Section 204 (e), and dismissed the complaint. This leaves the case where the facts are to be accepted as stated in the complaint. The reasons assigned herein for the allowance of the writ are based upon the facts as alleged in the complaint. Upon those facts the Emergency Court of Appeals, it is respectfully submitted, erred in dismissing the complaint.

The reasons herein stated are amplified by a fuller statement of the facts and of the law applicable thereto in the brief bound with this petition.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Emergency Court of Appeals, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a transcript and record of the proceedings herein named; and that the decision and judgment of the United States Emergency Court of Appeals be reversed by this Honorable Court, and your Petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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